

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
SENIOR VICE PRESIDENT &  
CHIEF POLICY OFFICER  
GOVERNMENT AFFAIRS

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

February 8, 2017

The Honorable John Hoeven  
Chairman  
Committee on Indian Affairs  
United States Senate  
Washington, DC 20510

The Honorable Tom Udall  
Vice Chairman  
Committee on Indian Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Hoeven and Vice Chairman Udall:

The U.S. Chamber of Commerce strongly supports S. 63, the “Tribal Labor Sovereignty Act of 2017” (TLSA), and S. 245, the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2017,” that are both to be considered by the Committee today.

**Tribal Labor Sovereignty:** Sponsored by Senator Moran, TLSA enjoys bipartisan support and would respect and promote tribal sovereignty by affirming the rights of tribal governmental employers to determine their own labor practices on their own lands. During the 114th Congress this bill passed the House with that strong support.

In 1935, the National Labor Relations Act (NLRA) was enacted to ensure fair labor practices, but excluded federal, state and local governmental employers from its reach. Though the NLRA did not expressly mention Indian tribes let alone treat Indian tribes as governmental employers, the NLRB respected the sovereign status of tribal governmental employers for close to seventy years before abruptly abandoning its own precedent and reversing course with the *San Manuel Indian Bingo* case in 2004.

Since that decision, the NLRB has been aggressively asserting jurisdiction over tribal labor practices when the Board determines tribal government employers are acting in a “commercial” rather than a “governmental” capacity – an analysis it does not apply to federal, state or local government employers.

TLSA would build upon a demonstrably successful principle: where tribal sovereignty is vigorously exercised, economic success follows. S. 63 would prevent an unnecessary and unwarranted overreach by the NLRB into the sovereign jurisdiction of tribal governments. By amending the NLRA to specifically exempt tribal governments, S. 63 would provide certainty and clarity to ensure that tribal governmental statutes concerning labor relations would remain

intact. The Chamber believes that this approach would best meet the needs of the tribes and the American business community more generally.

**Indian Energy:** A version of S. 245 passed the Senate twice last Congress, and can legitimately be considered old business. The “Indian Tribal Energy Development and Self Determination Act Amendments of 2017” would streamline and clarify how a tribe applies for, and how the Department of Interior approves, Tribal Energy Resource Agreements, thereby “granting authority to [a] tribe to review, approve, and manage leases, business agreements, and rights-of-way for energy development on tribal lands, without the approval of the Secretary of the Interior.”<sup>1</sup> Because the current process for obtaining a TERA is so unclear, no tribe has submitted a TERA for secretarial approval since 2005.

In addition to the TERA-perfecting amendments, S. 245 includes provisions to reform and improve the trust asset appraisal process, biomass demonstration projects, and authorizes tribal involvement in the Department of Energy weatherization program.

The Chamber strongly supports both S. 63 and S. 245 and requests that the Committee favorably report the bills so the full Senate can take them up for consideration expeditiously.

Sincerely,



Neil L. Bradley

cc: Members of the Committee on Indian Affairs

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<sup>1</sup> <http://teeic.indianaffairs.gov/abouttera/>